



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket No. USCG-2019-0813]**

**RIN 1625-AA00**

**Safety Zones; Humboldt Bay Bar and Entrance Channel, Eureka, CA, Noyo River Entrance Channel, Ft. Bragg, CA, and Crescent City Harbor Entrance Channel, Crescent City, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing three temporary safety zones in the navigable waters of the Humboldt Bay Bar and Entrance Channel, of Eureka, CA; Noyo River Entrance Channel, of Fort Bragg, CA; and Crescent City Harbor Entrance Channel, of Crescent City, CA to safeguard navigation during extreme environmental conditions. These safety zones are established to protect the safety of vessels transiting the areas from the dangers associated with extreme breaking surf and high wind conditions occurring in the Humboldt Bay Bar and Entrance Channel, Noyo River Entrance Channel, and Crescent City Harbor Entrance Channel. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zones without permission of the Captain of the Port San Francisco or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 31, 2019. For purposes of enforcement, actual notice will be used from September 25, 2019 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0813 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Lieutenant Jennae Cotton, Waterways Management, U.S. Coast Guard; telephone (415) 399-3585, e-mail at [SFWaterways@uscg.mil](mailto:SFWaterways@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port San Francisco
DHS	Department of Homeland Security
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because it is

impracticable.

On September 21, 2019, the Coast Guard was informed of forecasted extreme environmental conditions occurring near three respective locations of California likely to exceed the maximum environmental limits of the 47-foot Motor Lifeboat employed by the Coast Guard as the primary rescue asset in each area. These three locations are: the Humboldt Bay Bar and Entrance Channel, near Eureka, CA; the Noyo River Entrance Channel, near Fort Bragg, CA; and the Crescent City Harbor Entrance Channel, near Crescent City, CA. The National Oceanic and Atmospheric Administration's National Weather Service forecasts up to 19-foot breaking seas in the area from 25 September, 2019 through 26 September, 2019. This area is subject to extreme weather annually, but this year's forecast of extreme weather starting in September is earlier than is typical. Last year's comparable forecast of 24-foot breaking seas occurred in November, which is typically the month when the Coast Guard has historically established temporary safety zones in the navigable waters of the Humboldt Bay Bar and Entrance Channel, of Eureka, CA, Noyo River Entrance Channel, of Fort Bragg, CA, and Crescent City Harbor Entrance Channel, of Crescent City, CA. Due to the consistency of extreme environmental conditions typically observed between the months of November and March each winter, the Coast Guard is in the process of establishing a permanent regulation to account for intermittent periods of hazardous conditions, such as high wind or breaking surf. That regulation is expected to begin the notice and comment phase of public rulemaking shortly. Between now and the implementation of the permanent regulation, if enacted, these three safety zones are necessary to provide for the safety of mariners transiting the area due to the dangers posed by these extreme environmental

conditions and the resulting limited availability of rescue assets. The Coast Guard learned of the extreme weather forecast on 21 September 2019, and must establish the three safety zones before 25 September 2019, and so lacks sufficient time to provide a reasonable comment period and to consider comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause also exists for making this rule effective less than 30 days after publication in the ***Federal Register***. For similar reasons as stated above, notice and comment procedures would be impracticable in this instance because the hazardous conditions associated with the extreme environmental conditions precipitating the rulemaking will occur before the full rulemaking process could be completed.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority 46 U.S.C. 70034 (previously 33 U.S.C. 1231). Notable hazards associated with the extreme environmental conditions have been observed in the Humboldt Bay Bar and Entrance Channel near Eureka, CA; the Noyo River Entrance Channel, near Fort Bragg, CA; and the Crescent City Harbor Entrance Channel, of Crescent City, CA. These safety zones establish temporary restricted areas on the navigable waters of the Humboldt Bay Bar and Entrance Channel near Eureka, CA; the Noyo River Entrance Channel, near Fort Bragg, CA; and the Crescent City Harbor Entrance Channel, of Crescent City, CA. Because extreme environmental conditions are predicted for September 25, 2019 which is outside of the typical season between November and March when dangerous sea state conditions have historically been observed, these restricted areas are necessary to mitigate the risks

associated with vessels transiting the area while extreme environmental conditions exist on scene.

#### **IV. Discussion of the Rule**

The Coast Guard will enforce, independent of each other, three respective safety zones in the navigable waters of the Humboldt Bay Bar and Entrance Channel near Eureka, CA; the Noyo River Entrance Channel, near Fort Bragg, CA; and the Crescent City Harbor Entrance Channel, of Crescent City, CA, when the COTP determines that the on scene conditions are hazardous and unsafe for vessel transits, typically expected to be 20-foot breaking seas at each location. Enforcement will be announced via Broadcast Notice to Mariners. These safety zones are effective from September 25, 2019, through December 31, 2019. These safety zones will be enforced with actual notice until this rulemaking is published in the Federal Register, and with constructive notice thereafter.

The effect of the temporary safety zones is to restrict navigation in the vicinity of the Humboldt Bay Bar and Entrance Channel; Noyo River Entrance Channel; and Crescent City Harbor Entrance Channel while the hazardous conditions associated with extreme environmental conditions exist, and until the Coast Guard deems the safety zone is no longer needed. Except for persons or vessels authorized by the COTP or the COTP's designated representative, no person or vessel may enter or remain in the restricted areas during times of enforcement. As used in the rule, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or at a Coast Guard unit or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zones. These three regulated areas are needed to keep vessels

away from the immediate vicinity of the hazardous conditions associated with the forecasted extreme weather to ensure the safety of transiting vessels in each respective area.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zones. Although this rule restricts access to the waters encompassed by the safety zones, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zones will result in minimum impact, and because the rule will be enforced only during dangerous conditions caused by extreme weather. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing, if these facilities or vessels are in the vicinity of the safety zones at times when the zones are being enforced. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) this rule will encompass only a small portion of the waterway for a limited period of time while hazardous conditions exist, and (ii) the maritime public will be advised in advance of this safety zones via Broadcast Notice to Mariners.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small

Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.



#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and U.S. Coast Guard Environmental Planning Policy, COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves three safety zones which will be implemented during periods of extreme environmental conditions in Humboldt Bay Bar and Entrance Channel near Eureka, CA; the Noyo River Entrance Channel, near Fort Bragg, CA; and the Crescent City Harbor Entrance Channel, of Crescent City, CA. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of Department of Homeland Security Directive 023-01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are

asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T11-998 to read as follows:

#### **§165.T11-998 Safety zones; Humboldt Bay Bar and Entrance, Noyo River Entrance, and Crescent City Harbor Entrance Channel Closures, Humboldt Bay, Eureka, CA.**

- (a) Location. The following areas are safety zones:

- (1) All navigable waters, from surface to bottom, of the Humboldt Bay Bar Channel and the Humboldt Bay Entrance Channel, of Humboldt Bay, CA;

- (2) All navigable waters, from surface to bottom, of the Noyo River Entrance Channel as defined by the Area contained seaward of the Line of Demarcation with northern boundary of the line originating in approximate position 39°25'41"N, 123°48'37"W and extending 1200 yards at bearing 290° T, and southern boundary of the

line originating in approximate position 39°25'38"N, 123°48'36"W and extending 1200 yards at 281° T, in Fort Bragg, CA; and

(3) All navigable waters, from surface to bottom, of the Crescent City Harbor Entrance Channel, as defined by the area contained seaward of the line originating in approximate position 41°44'36"N, 124°11'18"W bearing 237°T and extending out to 1 NM from the Line of Demarcation in Crescent City, CA.

(b) Definitions. As used in this section, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or at a Coast Guard unit or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zones.

(c) Regulations. (1) Under the general regulations in subpart C of this part, entering into, transiting through, or anchoring within these safety zones are prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zones are closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the Humboldt Bay Entrance Channel or Crescent City Harbor Entrance Channel safety zones during times of enforcement shall contact Station Humboldt Bay on VHF-FM channel 16 or at (707) 443-2213 if contacting between 6:30 a.m. and 10 p.m., or Sector Humboldt Bay on VHF-FM channel 16 or at (707) 839-6113 if contacting between 10 p.m. and 6:30 a.m. Vessel operators desiring to enter or operate within the Noyo River Entrance Channel safety zone during times of enforcement shall contact Station Noyo River on VHF-FM channel

16 or at (707) 964-6611 if contacting between 6:30 a.m. and 10 p.m., or Sector Humboldt Bay on VHF-FM channel 16 or at (707) 839-6113 if contacting between 10 p.m. and 6:30 a.m. Vessel operators given permission to enter or operate in the safety zones must comply with all directions given to them by the COTP or the COTP's designated representative.

(d) Enforcement period. The zones described in paragraph (a) of this section will be effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 31, 2019. For purposes of enforcement, actual notice will be used from September 25, 2019 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This section will be enforced when the COTP determines that the on scene conditions are hazardous and unsafe for vessel transits due to extreme weather conditions.

(e) Information broadcasts. The COTP or the COTP's designated representative will notify the maritime community of periods during which this zone will be enforced in accordance with § 165.7.

Dated: September 24, 2019.

Marie B. Byrd,  
Captain, U.S. Coast Guard,  
Captain of the Port, San Francisco.

[FR Doc. 2019-21281 Filed: 10/2/2019 8:45 am; Publication Date: 10/3/2019]